



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1995

Ms. Alesia L. Sanchez
Legal Assistant
Legal and Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-710

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32260.

The Texas Department of Insurance (the "department") received a request for several items of information about Banner Life Insurance Company ("Banner Life"). You state that some of the information will be provided to the requestors. You ask whether a portion of the request asking for Banner Life's policy holder list is excepted from required public disclosure. You have submitted for our review a representative sample of the documents that are responsive to this portion of the request.

Article 1.24 of the Insurance Code permits the department to make inquiries of the licensed entities listed therein and requires those entities that receive such an inquiry to respond in a timely fashion.¹ Pursuant to this provision, the department required

¹Article 1.24 of the Insurance Code reads as follows:

The Board is authorized to address any reasonable inquiries to any insurance company or insurance agent, or to the holder of any permit, certificate of registration, or other authorization issued or existing under the authority or authorization of this code, in relation to the company's, agent's, or holder's business condition, or any matter connected with its transactions which the Board may deem necessary for the public good or for a proper discharge of its duties. It shall be the duty of the addressee to answer such inquiries in writing not later than the 10th day after the date the request is received. *A response made under*

Banner Life to furnish to it data from the company's computer records including a list of the names and addresses of policy holders of both active and canceled Banner Life annuity and life products sold since January 1, 1992, through an insurance agency in Texas. Banner Life delivered a computer-generated list, titled Life & Deferred Annuity Policies Issued in Texas 1992/1993/1994, to the department that contained the information the department required. In a letter accompanying the list, Banner declared that the list was proprietary in nature and therefore privileged or confidential by law and requested that it not be made public.

Since the property and privacy rights of a third party, Banner Life, are implicated by the release of the requested information, this office notified Banner Life of this request. See Gov't Code § 552.305 (permitting interested third party to submit to the attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that section 7(c) of V.T.C.S. article 6252-17a, predecessor provision of sect. 552.305 of the Government Code, permits a governmental body to rely on an interested third party to raise and explain the applicability of an exception in the Open Records Act in certain circumstances).

Banner Life contends that the list of names and addresses of its policy holders is a customer list, and is therefore, a trade secret protected from required public disclosure under section 552.110 of the Government Code. The Supreme Court of Texas has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958); see also Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of

(Footnote continued)

this article that is otherwise privileged or confidential by law remains privileged or confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction. (Emphasis added).

specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757, cmt. b (1939). The Restatement also lists the following six factors to be considered in determining whether particular information constitutes a trade secret:

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information;
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939). Customer lists may be withheld only if they meet the six criteria of the Restatement of Torts. *See* Open Records Decision No. 494 (1988) at 5.

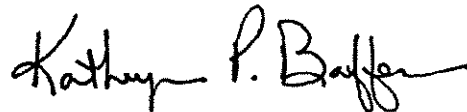
This office will accept a claim that information is a trade secret when a prima facie case is made that the information in question constitutes a trade secret, and no argument is made that rebuts that assertion as a matter of law. *See* Open Records Decision No. 552 (1990). Banner Life states that it has not given this list to any other entity except the department pursuant to its article 1.24 request. The disclosure of a customer list to a government body does not destroy the secrecy of a customer list. We have considered the arguments of Banner Life. To the extent that the individuals listed on the computer-generated document at issue are policy holders, Banner Life has established that this document is a customer list and constitutes a trade secret. We, therefore, conclude that the department must withhold the list from required public disclosure based upon section 552.110 of the Government Code.

We note that the department submitted to this office a "representative sample" of the requested information. Thus, in reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the

requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref: ID# 32260

Enclosures: Submitted documents

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